

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MERRILL LYNCH, PIERCE, FENNER  
& SMITH INCORPORATED,

Plaintiff,

File No. 1:10-cv-1113

v.

HON. ROBERT HOLMES BELL

JAMES MACLACHLAN,

Defendant.

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**TEMPORARY RESTRAINING ORDER**

This matter is before the Court on Plaintiff Merrill Lynch, Pierce, Fenner & Smith's (Merrill Lynch) *ex parte* request for a temporary restraining order. Upon review of Plaintiff's complaint and the affidavit of Ms. Jamie Herring, it appears the Plaintiff is likely to suffer irreparable harm as a consequence of Defendant James MacLachlan's alleged removal, dissemination, and improper use of proprietary information.

Plaintiff alleges that Defendant has improperly removed and retained confidential and proprietary information, including a list of Merrill Lynch clients, in violation of the Account Executive Trainee Agreement (AETA) signed by Mr. MacLachlan. Plaintiff alleges that Defendant has used and will continue to use improperly retained information to solicit Merrill Lynch clients, also in violation of the AETA. Upon initial review, it appears that Plaintiff would be at risk of immediate and irreparable injury, loss, or damage before

Defendant can be heard in opposition unless Defendant is enjoined from disseminating or improperly using proprietary information, and from soliciting Merrill Lynch clients. A temporary restraining order as to the Defendant is therefore warranted. Accordingly,

**IT IS HEREBY ORDERED** that Defendant James MacLachlan is **RESTRAINED** from, directly or indirectly, soliciting or otherwise initiating any further contact or communication with any customer of Merrill Lynch whom MacLachlan served or whose name became known to MacLachlan while in the employ of Merrill Lynch for the purpose of inviting, encouraging or requesting the transfer or any accounts or business patronage from Merrill Lynch (excluding Defendant's family and relatives).

**IT IS FURTHER ORDERED** that Defendant is temporarily **RESTRAINED** from, directly or indirectly, soliciting or otherwise initiating any further contact or communication with any customer of Merrill Lynch whose records or information MacLachlan used in violation of Paragraph 2 of his Account Executive Trainee Agreement.

**IT IS FURTHER ORDERED** that Defendant is temporarily **RESTRAINED** from using, disclosing, or transmitting for any purpose, including solicitation of said customers, the information contained in the records of Merrill Lynch or concerning its customers, including, but not limited to, the names, addresses, and financial information of said customers.

**IT IS FURTHER ORDERED** that Defendant is temporarily **RESTRAINED** from destroying, erasing, or otherwise making unavailable for further proceedings in this matter, or in any arbitration proceeding between the parties, any records or documents (including

data or information maintained in computer media) in MacLachlan's possession or control which were obtained from or contain information derived from any Merrill Lynch records, which pertain to Merrill Lynch customers whom MacLachlan served or whose names became known to MacLachlan while employed by Merrill Lynch, or which relate to any of the events alleged in the Complaint in this action.

**IT IS FURTHER ORDERED** that a **HEARING** shall be held on Plaintiff's request for a preliminary injunction on Thursday, November 18, 2010, at 2:00 PM, in Courtroom 601, Ford Federal Building, 110 Michigan Ave. N.W., Grand Rapids, MI 49503, at which time Defendant shall **SHOW CAUSE** why a preliminary injunction should not be entered against him as prayed for in Plaintiff's verified complaint..

**IT IS FURTHER ORDERED** that Plaintiff shall serve on Defendant a copy of the verified complaint, the affidavit of Ms. Jamie Herring as soon as possible and before November 12, 2010.

This order shall issue immediately and remain in full force and effect until November 18, 2010, unless extended by further order of this Court.

Dated: November 10, 2010

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
UNITED STATES DISTRICT JUDGE